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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4563 OF 1994

Rambhau Sadashiv Jawalkar
At & Post: Khanapur
Tal.:Haveli, Dist.: Pune ... Petitioner

V/s.

1. The Dy.Conservator of Forests
Pune Forest Division, Pune
Pune-Bombay Road, Pune

2. The Judge,
III Labour Court, Pune
'Parvaz' Bldg., Shankarshet Road
Pune
3. The Member
Industrial Corut, Pune
'Parvaz' Bldg., Shankarshet Road
Pune ... Respondents

Ms.Seema Sarnaik for Petitioner
None for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 18, 2006**

ORAL JUDGMENT:

. This Petition is directed against the order of the Industrial Court passed on a Revision Application

filed by Respondent No.1.

2. The Petitioner was employed in the forest department at Khanapur Nursery since 1988. He was employed as a Mazdoor and was expected to prepare nursery beds for planting saplings in the nursery. According to the Petitioner, his services were illegally terminated on 22.6.1989. He was refused work from 23.6.1989. He therefore, filed a complaint under Item 1 (a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. He contended in the said complaint that although he had completed 240 days in service, the respondent had wrongfully terminated his services, orally. No notice or wages in lieu of notice was tendered to him. Retrenchment compensation was not offered to him prior to the termination of his services. No show-cause notice was issued to him. It is in these circumstances that he filed complaint (ULP) No.116 of 1989.

3. The written statement was filed by the Respondent on 21.12.1990 wherein it was contended that the Petitioner had voluntarily abandoned his services. Other contentions raised in the written statement are that the work was of a seasonal nature and that the Petitioner often quarrelled with the superiors and had

therefore left the services of his own accord.

4. Significantly, there is no mention of any report having been filed by the Petitioner's superior in the office of the respondent. However, the respondent has filed such a report in Court on 4.11.1992, two years after the written statement was filed. This report which is dated 23.6.1989 has been signed by the R.O. and has been addressed to the Conservator of Forests, Khanapur. It mentions that the Petitioner had been assigned some jobs which were to be completed within the time stipulated by his superior. However, instead of completing that work, the Petitioner voluntarily left the workplace and abandoned his services.

5. The report was taken on record by the Industrial Court after the deposition of the Petitioner commenced. However, no questions have been put to the workman with regard to this report. Suggestions have been made that he abandoned the services. In the deposition of the respondent's witness, he has admitted that no memo was issued to the Petitioner for not completing the work assigned to him. It has also been admitted that the work is available at the Khanapur nursery. The Labour Court, in my opinion, rightly came to the conclusion that the respondent had committed an unfair labour practice under Item 1(b), (d) and (f) of Schedule VI of

the MRTU & PULP Act. The Labour Court came to the conclusion that the Petitioner had proved that his services were wrongfully terminated and that he had not abandoned his services.

6. Aggrieved by the order of the Labour Court, the Respondent preferred a revision under section 44 of the MRTU & PULP Act. This revision was allowed by the impugned order of 2.11.1993. The Industrial Court was of the view that the report which was exhibited at Exhibit 29 clearly indicates that the Petitioner had abandoned the services and therefore, the Petitioner was not entitled to reinstatement. The Industrial Court has also observed that since the complainant i.e., the Petitioner herein, was working as an agricultural labourer and was drawing Rs.30/- a day, it would indicate that he was not in the need of a job since he was "reckless, negligent and has developed the habit of avoiding work". The Revision was therefore allowed.

7. In my view, the observations by the Industrial Court that the Petitioner had no reason to continue in employment are uncalled for. There is nothing on record to suggest that he was not interested in his job. Abandonment of services cannot be presumed by an employer as held by the Division Bench of this Court in the case of Gaurishankar Vishwakarma v/s. Eagle Spring

Industries Pvt. Ltd. & Ors., 1988 I CLR 38. The employer has not followed the procedure mentioned in the aforesaid judgment while presuming that the Petitioner had abandoned his service. The Petitioner has stated in his deposition that after his services were terminated whenever work was available to him as an agricultural labourer, he secured Rs.30/- a day. This, in my opinion, would not lead to any inference that he was not interested in his job. The Industrial Court has wrongly accepted the report when there is no material on record to suggest that the workman had abandoned his job.

8. In such circumstances, the order of the Industrial Court needs to be set aside. However, the question remains as to what should be the backwages which should be paid to the Petitioner. The Petitioner has earned some amount while he was out of service. This has not been considered by the Labour Court. In my view, the matter can be remanded to the Labour court to decide this issue.

9. The order of the Industrial Court is set aside. The order of the Labour Court granting reinstatement is confirmed. However, the Labour Court shall within three months decide whether the Petitioner is entitled to backwages at all. The parties shall accordingly remain present before the Labour Court on 3.10.2006.

10. Petition is disposed off accordingly.